

An Act to Facilitate Compliance with Spill Prevention Requirements and Authorize Reimbursement for Certain Oil Spill Remediation Expenses

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 37-B MRSA §797, sub-§7, as enacted by PL 1989, c. 464, §3 and amended by c. 929, §2, is further amended to read:

7. Transportation. A description of the manner in which the substance is shipped to the facility; ~~and~~

Sec. 2. 37-B MRSA §797, sub-§8, as enacted by PL 1989, c. 929, §3, is amended to read:

8. Progress toward toxics use reduction goals. For those persons required to submit a form under this section for extremely hazardous substances, a report on the progress made by the facility toward meeting the toxics use reduction goals established in Title 38, section 2303-; and

Sec. 3. 37-B MRSA §797, sub-§9, is enacted to read:

9. Spill prevention and control. If the facility is an aboveground oil storage facility as defined under Title 38, section 562-A, subsection 1-A, a statement certifying that underground piping at the facility meets the requirements of Title 38, section 570-K, subsection 3, and that a spill prevention control and countermeasure plan has been prepared and implemented for the facility if required under federal regulations promulgated pursuant to the Federal Water Pollution Control Act, 33 United States Code, Sections 1321 and 1361.

Sec. 4. 37-B MRSA §806, sub-§5, is enacted to read:

5. Enforcement by the Commissioner of Environmental Protection. The Commissioner of Environmental Protection may take enforcement action under Title 38, section 347-A, whenever, after investigation, it appears that a person has failed to provide the certification required under section 797, subsection 9, or has made a false certification.

Sec. 5. 38 MRSA §569-A, sub-§10, as enacted by PL 1991, c. 817, §26, is repealed and the following enacted in its place:

10. Reimbursements to fund. The commissioner shall seek recovery for the use of the fund of all sums expended from the fund, including overdrafts, for the purposes described in subsection 8, paragraphs B, D, E, H and J, or for other damage incurred by the State in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, unless the commissioner finds the amount involved too small or the likelihood of success too uncertain or unless the commissioner finds an applicant to be eligible for fund coverage under section 568-A, subsection 1. If an applicant is found to be eligible for fund coverage, the commissioner shall seek recovery of sums exceeding \$1,000,000 and sums expended for costs covered by insurance required under federal regulations promulgated

pursuant to the Motor Carrier Act, 49 United States Code, Section 31139. If a request for reimbursement to the fund is not paid within 30 days of demand, the commissioner shall refer the request to the Attorney General or to a collection agency, agent or attorney retained by the department with the approval of the Attorney General in conformance with Title 5, section 191 for collection.

Sec. 6. 38 MRSA §570, first ¶, as amended by PL 1999, c. 278, §4, is further amended to read:

The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569-A, subsection 8, paragraphs B, D, E, H and J, or other damage incurred by the State, except for costs found by the commissioner to be eligible for coverage under the fund. The term "other damages" as used in this paragraph, includes interest computed at 15% a year from the date of expenditure, and damage for injury to, destruction of, loss of, or loss of use of natural resources and the reasonable costs of assessing natural resources damage. The commissioner shall demand reimbursement of costs and damages paid by the department from state or federal funds except as provided under section 569-A, subsection 10~~for amounts that are eligible for coverage by the fund under this subchapter~~. Payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

Sec. 7. 38 MRSA §570-K, sub-§4, as enacted by PL 1993, c. 363, §17 and affected by §21, is amended to read:

4. Exemption. The following aboveground oil storage facilities are exempt from the requirements of subsections 2 and 3~~this section~~:

- A. Facilities or portions of facilities that are used exclusively for the storage of #2 and other home heating oil and consist of an individual tank of 660 gallons or less capacity or an aggregate tank capacity of 1320 gallons or less; and
- B. Facilities containing only liquefied petroleum gas or liquefied natural gas.

Sec. 8. 38 MRSA §570-K, sub-§5, is enacted to read:

5. Spill prevention and control. An aboveground oil storage facility must be operated in compliance with the federal requirements for preparation and implementation of spill prevention control and countermeasure plans, 40 Code of Federal Regulations, 112 (2001). Failure to comply with these federal regulations or with the certification requirement under Title 37-B, section 797, subsection 9, constitutes a violation of this title. When the department proposes to require an amendment to a plan pursuant to 40 CFR 112.4(e)(2001) which the owner or operator

believes is not required under federal law, the department shall consult with the United States Environmental Protection Agency regarding the applicable federal requirement.

Summary

The purpose of this bill is to eliminate avoidable and inappropriate disbursements from the state Ground Water Oil Clean-up Fund by:

1. Improving compliance with state and federal regulatory requirements that reduce the risk of spills from aboveground oil storage tanks; and
2. Authorizing reimbursement to the Ground Water Oil Clean-up Fund of spill cleanup costs that are covered by private insurance required under the federal Motor Carrier Act.

Under this bill, owners of aboveground oil storage facilities are required to certify, on the annual chemical inventory reporting form submitted to the Maine Emergency Response Commission, that underground piping at the facility meets existing state regulatory requirements and that the facility meets existing federal regulatory requirements for preparation and maintenance of a spill prevention control and countermeasure plan. The latter requirements are incorporated into state law so that they can be enforced by the Department of Environmental Protection.

This bill also requires the Department of Environmental Protection to consult with the United States Environmental Protection Agency when requiring the owner or operator of an aboveground oil storage facility to amend its spill prevention control and countermeasure plan if the owner or operator believes that the amendment is not required by federal law.